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Attorneys for Plaintiff CRAIG YATES

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Attorneys for Defendants VILLAGE PIZZERIA; VILLAGE PIZZERIA,
INC.; and MACIEL CICERO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES,

Plaintiff,

v.

YEE MEI CHEUNG & FAMILY; YEE
MEI CHEUNG; TAT CHEUNG; MACIEL
CICERO; LAGHAEI FARID; WAI BING
CHEUNG; YOUNG NG YING; VILLAGE
PIZZERIA; VILLAGE PIZZERIA,
INC.; THIDWICK BOOKS; LEA GREY;
PERIOD GEORGE; GIBSON LINES,
LLC; DONALD GIBSON; AND DOES 1
THROUGH 50, INCLUSIVE,

Defendants.

CASE NO. CV-10-05404 MEJ
Civil Rights

STIPULATION AND ~~Proposed~~
ORDER RE BLUEPRINTS

TO THE COURT:

WHEREAS the construction history of the building and public
sidewalk at Nos. 1 - 11 Clement Street, San Francisco,

1 California, (hereafter "Subject Building") is at issue in this
2 case;

3 WHEREAS, the Custodians of Records Of The City and County of
4 San Francisco Department of Building Inspection and of the
5 Planning Department (AKA The "City of San Francisco Building and
6 Planning Departments") are in possession of certain blueprints,
7 schematics and drawings related to the design and construction of
8 the subject building that are potentially relevant to the
9 construction history and liability issues in this case, or will
10 lead to the discovery of admissible evidence on such issues,

11 WHEREAS the Parties desire to obtain certified copies from
12 the Building and Planning Department of these documents for
13 discovery and evidentiary purposes,

14 WHEREAS Plaintiff has served a subpoena on the Building
15 Department and Planning Departments at **Exhibits 1 and 2**,

16 WHEREAS building departments in California typically assert
17 that blueprints, schematics and drawings are allegedly
18 "privileged" material, and that such departments are constrained by
19 Health & Safety Code Section 19851 from producing copies of such
20 documents, even when served with a federal subpoena, i.e., unless,
21 inter alia, they are ordered by the Court to do so (see example
22 from the City of Los Angeles Building Department at **Exhibit 3**), ^{1/}

24 ¹ California Health and Safety Code Section 19851 provides
25 that the official copy of building plans maintained by the
26 building department of a city "may not be duplicated in
27 whole or in part except (1) with the written permission,
28 which permission shall not be unreasonably withheld as

1 WHEREFORE, ALL PARTIES WHO HAVE SO FAR APPEARED IN THIS
2 ACTION HEREBY REQUEST that the Court order the Building and
3 Planning Departments to produce all blueprints, schematics and
4 drawings and any other allegedly privileged material requested by
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19 specified in subdivision (f), of the certified, licensed
20 or registered professional or his or her successor, if
21 any, who signed the original documents and the written
22 permission of the original or current owner of the
23 building, or, if the building is part of a common interest
24 development, with the written permission of the board of
25 directors or governing body of the association established
26 to manage the common interest development, **or (2) by order**
27 **of a proper court or upon the request of any state**
28 **agency."** (Emphasis added.)

Plaintiff in the Subpoenas at **Exhibits 1 and 2.**

SO STIPULATED.

Dated: March 31, 2012

TIMOTHY S. THIMESCH
THIMESCH LAW OFFICE



Attorneys for Plaintiff
CRAIG YATES

Dated: March 31, 2012

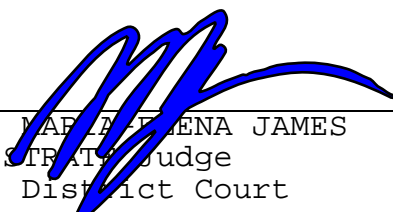
RICHARD L. BECKMAN, ESQ.
BECKMAN MARQUEZ & DOWLING LLP

/s/ Authorized Signed
Attorneys for Defendants
VILLAGE PIZZERIA; VILLAGE PIZZERIA,
INC.; and MACIEL CICERO

ORDER

SO ORDERED. _____

Dated: April 10, 2012



HON. MARIA ELENA JAMES
MAGISTRATE Judge
U.S. District Court

EXHIBIT 1

UNITED STATES DISTRICT COURT

for the

Northern District of California

Craig Yates

Plaintiff

v.

Yee Mei Cheung & Family, et al.

Defendant

Civil Action No. CV-10-05404 MEJ

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: San Francisco Department of Building Inspection, 1660 Mission Street, San Francisco, CA 94103

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Certified Copies of the Records Listed in Exhibit 1

Place: San Francisco Department of Building Inspection, 1660
Mission Street, San Francisco, CA 94103

Date and Time:

05/03/2012 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 03/31/2012

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiff Craig Yates

, who issues or requests this subpoena, are:

TIMOTHY S. THIMESCH, ESQ. (NO. 148213); THIMESCH LAW OFFICES, 158 Hilltop Crescent, Walnut Creek, CA 04597-3452; 925-588-0401

Civil Action No. CV-10-05404 MEJ

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

"Exhibit 1" TO SUBPOENA IN A CIVIL CASE:

YOU and **YOUR** as used herein refer to CUSTODIAN OF RECORDS, CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSEPTION (AKA THE "CITY OF SAN FRANCISCO DEPARTMENT OF BUILDING AND SAFETY").

PLEASE PRODUCE **ANY AND ALL** DOCUMENTS WHATSOEVER IN YOUR POSSESSION, CUSTODY, CARE AND/OR CONTROL THAT RELATE TO the building located at or near Nos. 1 - 11 Clement Street, San Francisco, California, Block 1433, Lot 037, and Assessor Volume #10. This includes the building and the surrounding premises (including, but not limited to, the sidewalk, walkway, entrances, hallways, tenant spaces, public restrooms, etc., at such location, and/or any part thereof). The subpoena also includes any and all documents related to **YOUR** communication with the owners, operators, managers, and lessors, of such property, and its agents, employees and attorneys, including, but not limited to, the following:

- a) Building, Planning, Zoning and Permits, Applications, and Inspection Records;
- b) Correspondence;
- c) Memorandums;
- d) Notes;
- e) Your Reports Concerning the Subject Property;
- f) Your Billings, Invoices, and Receipts, Contracts, Etc.;
- g) Surveys;
- h) Historical Data;
- i) Photographs;

- j) Construction Invoices, Billings, Etc.
- k) Inventories, Interviews, Copies of Historical Records and Articles;
- l) Blueprints;
- m) Written Findings Concerning Historical Fabric;
- n) Any and All Documents That Refer or Relate to Communications With the City and County of San Francisco Departments in charge of building and planning functions;
- o) Any and All Documents That Refer or Relate to Communications With the State Department of Rehabilitation Mobility and Communications Barriers Section and the Office of the State Architect;
- p) Any and All Documents That Refer or Relate to Communications with the City and County of San Francisco Board of Supervisors;
- q) Any and All Documents That Refer or Relate to Communications with the City and County of San Francisco City Council;
- r) Any and All Documents That Refer or Relate to Exceptions Granted or Sought for 'Unreasonable Hardship' From Title 24 Requirements;
- s) Any and All Documents That Refer or Relate to Consultation With Local Disabled Advocacy

////

Groups;

Dated: March 31, 2012

Thimesch Law Offices



Attorneys for Plaintiff
CRAIG YATES

EXHIBIT 2

UNITED STATES DISTRICT COURT

for the

Northern District of California

Craig Yates

Plaintiff

v.

Yee Mei Cheung & Family, et al.

Defendant

Civil Action No. CV-10-05404 MEJ

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103;
Telephone 415-558-6378

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Certified Copies of the Records Listed in Exhibit 1

Place: San Francisco Department of Building Inspection, 1660
Mission Street, San Francisco, CA 94103

Date and Time:

05/03/2012 10:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 03/31/2012

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiff Craig Yates

, who issues or requests this subpoena, are:

TIMOTHY S. THIMESCH, ESQ. (NO. 148213); THIMESCH LAW OFFICES, 158 Hilltop Crescent, Walnut Creek, CA 04597-3452; 925-588-0401

Civil Action No. CV-10-05404 MEJ

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This subpoena for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

 _____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
 _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

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(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

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(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

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(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(i).

"Exhibit 1" TO SUBPOENA IN A CIVIL CASE:

YOU and **YOUR** as used herein refer to CUSTODIAN OF RECORDS,
CITY AND COUNTY OF SAN FRANCISCO PLANNING DEPARTMENT.

PLEASE PRODUCE **ANY AND ALL** DOCUMENTS WHATSOEVER IN
YOUR POSSESSION, CUSTODY, CARE AND/OR CONTROL THAT RELATE TO
the building located at or near Nos. 1 - 11 Clement Street, San
Francisco, California, Block 1433, Lot 037, and Assessor Volume
#10. This includes the building and the surrounding premises
(including, but not limited to, the sidewalk, walkway,
entrances, hallways, tenant spaces, public restrooms, etc., at
such location, and/or any part thereof). The subpoena also
includes any and all documents related to **YOUR** communication
with the owners, operators, managers, and lessors, of such
property, and its agents, employees and attorneys, including,
but not limited to, the following:

- a) Building, Planning, Zoning and Permits,
Applications, and Inspection Records;
- b) Correspondence;
- c) Memorandums;
- d) Notes;
- e) Your Reports Concerning the Subject Property;
- f) Your Billings, Invoices, and Receipts,
Contracts, Etc.;
- g) Surveys;
- h) Historical Data;
- i) Photographs;
- j) Construction Invoices, Billings, Etc.
- k) Inventories, Interviews, Copies of Historical

Records and Articles;

l) Blueprints;

m) Written Findings Concerning Historical Fabric;

n) Any and All Documents That Refer or Relate to Communications With the City and County of San Francisco Departments in charge of building and planning functions;

o) Any and All Documents That Refer or Relate to Communications With the State Department of Rehabilitation Mobility and Communications Barriers Section and the Office of the State Architect;

p) Any and All Documents That Refer or Relate to Communications with the City and County of San Francisco Board of Supervisors;

q) Any and All Documents That Refer or Relate to Communications with the City and County of San Francisco City Council;

r) Any and All Documents That Refer or Relate to Exceptions Granted or Sought for 'Unreasonable Hardship' From Title 24 Requirements;

s) Any and All Documents That Refer or Relate to Consultation With Local Disabled Advocacy

////

Groups;

Dated: March 31, 2012

Thimesch Law Offices



Attorneys for Plaintiff
CRAIG YATES

EXHIBIT 3

COPY

CARMEN A. TRUTANICH, City Attorney (SBN 86629)
TAYO A. POPOOLA, Deputy City Attorney (SBN 134564)
ALAN W. BLACKMAN, Deputy City Attorney (SBN 216143)
MICHAEL J. BOSTROM, Deputy City Attorney (SBN 211778)
700 City Hall East
200 North Main Street
Los Angeles, CA 90012
Telephone: 213.978.8068
Facsimile: 213.978.8214
E-Mail: Michael.Bostrom@lacity.org

Attorneys for Third Party

**CITY OF LOS ANGELES DEPARTMENT OF BUILDING
AND SAFETY**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HUGH MARSH, et al.

Plaintiffs,

v.

GRAND KYOTO HOTEL, et al.

Defendant.

Case No. CV-10511-PA (AGRx)

Honorable Percy Anderson

**THIRD PARTY CITY OF LOS
ANGELES DEPARTMENT OF
BUILDING AND SAFETY'S
OBJECTIONS TO SUBPOENA FOR
PRODUCTION OF RECORDS**

1 Third Party City of Los Angeles Department of Building and Safety
2 (“LADBS”) hereby objects to Plaintiff Hugh Marsh’s July 4, 2010 document
3 subpoena requesting “blueprints” related to the hotel property located at 120 South
4 Los Angeles Street.

5 California Health and Safety Code Section 19851 provides that the official
6 copy of building plans maintained by the building department of a city “may not be
7 duplicated in whole or in part except (1) with the written permission, which
8 permission shall not be unreasonably withheld as specified in subdivision (f), of the
9 certified, licensed or registered professional or his or her successor, if any, who
10 signed the original documents and the written permission of the original or current
11 owner of the building, or, if the building is part of a common interest development,
12 with the written permission of the board of directors or governing body of the
13 association established to manage the common interest development, or (2) by order
14 of a proper court or upon the request of any state agency.”

15 Plaintiff has not provided LADBS with authorization from the building owner
16 or the design professional who signed the blueprints at issue in the subpoena. Nor
17 has Plaintiff provided LADBS with a Court Order pursuant to California Health and
18 Safety Code Section 19851. As such, state law prohibits LADBS from providing a
19 copy of the requested blueprints in response to the subpoena. LADBS may only
20 make the blueprints available for inspection.

21 LADBS takes no position on whether or not the Court in this action should
22 issue an order under California Health and Safety Code Section 19851 authorizing
23 the release of the requested blueprints.

24 //

25 //

26 //


27 //

28 //

Should the Court issues such an Order, LADBS will produce the requested blueprints within a reasonable period of time.

Dated: July 8, 2010

CARMEN A. TRUTANICH, City Attorney
TAYO A. POPOOLA, Deputy City Attorney
MICHAEL J. BOSTROM, Deputy City Attorney
ALAN W. BLACKMAN, Deputy City Attorney

By: 
MICHAEL J. BOSTROM
Deputy City Attorney

Attorneys for Third Party
**CITY OF LOS ANGELES DEPARTMENT OF
BUILDING AND SAFETY**

M:\REAL PROP_ENV_LAND USE\LAND USE\MICHAEL
BOSTROM\MARSHPLEADINGS\OBJECTIONS TO SUBPOENA.DOC